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June 3, 2011

Mr. David A. Stawick
Secretary
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, N.W.
Washington, DC 20581

**Re: Reopening and Extension of Comment Periods for Rulemakings
Implementing the Dodd-Frank Wall Street Reform and Consumer
Protection Act;**

**RIN 3038-AD18 – Core Principles and Other Requirements for Swap
Execution Facilities**

Dear Mr. Stawick:

The Commodity Futures Trading Commission ("CFTC") has requested further comment on proposed rules implementing Core Principles and other requirements for swap execution facilities ("SEFs") under the Commodity Exchange Act as amended by Dodd-Frank. *See* Reopening and Extension of Comment Periods for Rulemakings Implementing the Dodd-Frank Wall Street Reform and Consumer Protection Act, 76 Fed. Reg. 25,274 (May 4, 2011); *see also* Core Principles and Other Requirements for Swap Execution Facilities, 76 Fed. Reg. 1,214 (Jan. 7, 2011) (the "Proposed Rules"). The CFTC faces an important challenge in formulating appropriate and workable SEF rules in harmonization with the SEC and with international regulators that will promote swap trading on organized, regulated platforms, one of the key derivatives reform objectives of Dodd-Frank.

MarketAxess Corporation ("MarketAxess") operates a leading electronic trading platform for investment industry professionals that promotes transparency, price discovery and liquidity in the corporate bond and other markets, including credit default swaps.¹ MarketAxess' current operations are consistent with the CFTC's SEF proposals for trading protocols, price transparency, audit trails, independence,² financial resources, and providing qualified eligible

¹ MarketAxess Corporation is the principal operating subsidiary of MarketAxess Holdings Inc., a public company. We are regulated as a broker-dealer and as an alternative trading system operator by the U.S. Securities and Exchange Commission and the Financial Industry Regulatory Authority. Our principal offices are located in New York City, and we currently employ approximately 227 persons.

² Although initially a dealer-owned entity, MarketAxess Holdings Inc. is now a public company, with no dealer(s) owning, individually or in the aggregate, more than 20% of MarketAxess' common stock. In addition, MarketAxess' 12-person Board of Directors includes nine individuals who meet the requirements for independence under the rules of the Nasdaq Stock Market.



contract participants with fair and open access.

We are ideally suited to achieve Dodd-Frank's objectives for SEFs and intend to begin operations as a SEF and as a security-based SEF ("SB SEF") as soon as possible. We therefore have a strong interest in, and appreciate the opportunity to submit further public comment on, the CFTC's proposals that affect SEFs.

I. The Same Regulatory Standards Should Apply For All CDS.

MarketAxess intends to operate a SEF that uses the same trading protocols and systems for single-issuer CDS and broad-based index CDS. We urge the CFTC and the SEC to adopt registration and regulatory standards for SEFs and SB SEFs that are identical or as close to identical as possible. Foremost among our concerns in this regard is harmonization of the mandated trading protocols for SEFs and SB SEFs; and, in this regard, as we stated in our March 8 letter to the CFTC on the Proposed Rules ("Prior Letter"), we support the SEC's flexible interpretation of the SB SEF definition that would preserve the customer's valuable right to choose to submit a request-for-quote to one or more potential counterparties. This approach is essential to the efficient and non-fragmented development of the CDS markets and to the efficient and effective regulation of SEFs and SB SEFs.

Identical regulation is further supported by the common statutory Core Principles that Congress adopted for SEFs and SB SEFs. *See* Prior Letter at 21, note 24. Identical (or harmonized) regulation also would facilitate the CFTC's acceptance as a registered SEF of any entity that is registered with the SEC as a SB SEF and *vice versa*, as Congress clearly envisioned. *See* Dodd-Frank § 733, adding new CEA § 5h(g) (authorizing the CFTC to exempt a SEF from registration "if the [CFTC] finds that the facility is subject to comparable, comprehensive supervision and regulation on a consolidated basis by the Securities and Exchange Commission").³

Identical regulation is also supported by similarities between swaps that will be executed on SEFs and security-based swaps that will be executed on SB SEFs. *See* Prior Letter at 21. To an overwhelming extent, market participants that trade single name CDS will also trade broad-based index CDS, and vice versa. Both kinds of products operate under the same operational requirements and trading procedures; there are no significant differences in trading practices that would warrant differences in regulatory treatment. There is a considerable degree of fungibility between the two types of products, and these products can be substitutes for each other. For example, the CDX Emerging Market Index currently is comprised of 15 single names. A market participant could replicate the CDX Emerging Market Index by entering into 15 single name CDS, creating a synthetic substitute of that index. While market participants may find it easier to work with the one broad-based index, from a mathematical perspective, the values of the single names in this synthetic basket should be the same as the index.

³ *See also* corresponding provision authorizing the SEC at Dodd-Frank § 763(c), adding new Exchange Act § 3D(e). *See* Prior Letter at 20-21 for further discussion of passport registration.



II. SEF Regulations Should Be Among the First to Be Finalized (With an Adequate Lead Time for Implementation).

As evidenced at the CFTC's recent SEF Showcase, SEFs are ready, willing and able to facilitate the execution of swaps. In addition to moving swaps away from bilateral execution onto organized, regulated markets, the execution of more swaps on SEFs will facilitate the clearing of more swaps.

We are aware that at least a few commenters have suggested that the CFTC should first focus upon clearing, to the exclusion of implementation of standards and timetables for other key components of derivatives reform, such as trading of OTC contracts on regulated platforms. In our opinion, not only does this view fail to credit SEFs for their state of readiness to operate in accordance with Dodd-Frank, but it ignores the contribution of trading to achieving the benefits of central clearing.

It is true that the determination of the status of a contract as made "available to trade" will follow the determination that the contract is subject to mandatory clearing. But allowing SEFs to commence operations as regulated entities will expedite the voluntary listing by SEFs of a good number of OTC contracts for electronic trading.

As was frequently noted during the legislative process leading to the passage of Dodd-Frank, the existence of standardized OTC contract terms is a necessary, but not a sufficient, condition for a particular OTC contract to be clearable. DCOs also must determine that the market for such an OTC contract can provide reliable and transparent pricing on a consistent basis so as to support the DCO's daily settlement functions. SEF markets thus will play a critical role in the clearing process.

Accordingly, in order to allow swaps to continue to be executed on regulated markets and to bring more swaps onto these markets as soon as possible, the SEF regulations should be among the first to be finalized (with an adequate lead time for implementation). This approach will allow the regulatory service providers to prepare and offer their services to SEFs sooner. In the event that the CFTC's extensive compliance requirements for SEFs are ultimately implemented as proposed,⁴ this in turn will allow SEFs that are not already exchanges to comply with certain of the self-regulatory organization ("SRO") obligations proposed by the CFTC that are most akin to exchange obligations, through delegation to one of these providers. Until a provider will accept a SEF's SRO obligations, a qualified SEF applicant should be permitted to operate under Temporary Registration status, as discussed below.

⁴ As detailed in the Prior Letter at 11-15, Congress intended SEFs to be less regulated than futures exchanges. However, the cost of developing the full infrastructure and operational abilities needed to satisfy the proposed compliance, surveillance and disciplinary duties would be prohibitively expensive for an entity interested in becoming a SEF that is not already an exchange. Thus, MarketAxess argued in the Prior Letter, and continues to believe, that SEFs should be able to delegate broadly to regulatory service providers and that certain proposed obligations, such as annual audits of all market participants, do not appear to be necessary and should be reconsidered. Prior Letter at 15 and at 22.



III. Effective Temporary SEF Registration Is Essential To Moving Swaps Onto Regulated Markets As Soon As Possible.

The CFTC has correctly proposed a system for Temporary Registration of SEFs to avoid a delay in the process of registering SEFs that "could adversely affect SEF applicants, undermine the efficient implementation of the Dodd-Frank Act, create legal uncertainty for market participants and adversely affect the swaps market." Proposed Rules at 1,216. By identifying the harmful consequences of a delay, the CFTC has underscored the importance of adopting a Temporary Registration process that would permit any qualified applicant flexibility to demonstrate compliance with the essential elements of the SEF Core Principles. This flexibility would allow any qualified applicant to begin operations as a temporarily registered SEF.

Since proposing Temporary Registration certifications in our Prior Letter to address these core requirements (p. 18-19), we have discussed these issues with Commission staff and refined our thinking to include additional certifications that could be made by applicants. Our revised recommendations for Temporary Registration certifications are set forth in Appendix A to this letter.⁵

IV. A Platform that Only Operates a Request for Quote System Should Be Allowed To Register and Operate as a SEF.

We believe that a platform that only operates a Request for Quote System, as defined in Proposed Rule 37.9(a)(1)(ii), should be allowed to register and operate as a SEF. As recognized by this Proposed Rule, a platform that only operates a Request for Quote System satisfies the statutory definition of a SEF. *See* new CEA Section 1a(50).

Proposed Rule 37.9(b)(2) would require a SEF, when offering trading services to facilitate Required Transactions, to also "provid[e] market participants with the ability to post both firm and indicative quotes on a centralized electronic screen accessible to all market participants who have access to the swap execution facility." The CFTC may have intended that this Proposed Rule would not require such a SEF to have a central limit order book. But the text of the draft rule is not clear on this point, and other commenters seem to have drawn various inferences from this language. We therefore request that the CFTC clarify in its adopting release that a SEF that offers a Request for Quote System is not also required under Proposed Rule 37.9(b)(2) to offer a central limit order book.

We ask that the CFTC also clarify that a SEF that offers a Request for Quote System could satisfy Proposed Rule 37.9(b)(2) by providing market participants with the ability to stream quotes on Required Transactions on a centralized electronic screen.⁶

⁵ Appendix A is only intended to propose appropriate temporary registration certifications for a SEF that only offers a Request for Quote System. MarketAxess believes that different certifications would be appropriate for a SEF that offers an Order Book.

⁶ One market participant recently began streaming quotes to certain participants on MarketAxess' platform for U.S. high-grade and high-yield indices (CDX) as well as European indices (iTraxx). "MarketAxess and RBS announce launch of streaming executable markets for credit default swaps," (May 25, 2011), available at *(cont'd)*



V. SEF Regulations Must Promote Fair and Open Competition.

Unlike some other prospective SEFs, MarketAxess is not affiliated with any derivatives clearing organization. The CFTC's rules should promote fair and open competition between SEFs. We appreciate the CFTC's continued efforts to ensure that, in order to allow competition to flourish, its SEF regulations will create a level playing field, which will not place an independent SEF at a disadvantage.

VI. The CFTC Should Consider the SEC's Cost Estimates, Subject to Adjustments.

The CFTC's SEF proposal did not contain a cost estimate for compliance by new SEFs with SEF regulation. The SEC, however, attempted to provide such an estimate. MarketAxess believes that, with a few exceptions where adjustments are needed, the SEC's preliminary cost estimates are generally realistic and accurate estimates of the expected costs of establishing and operating a SB SEF. We further believe that the substantial costs of establishing and operating a SB SEF are likely to be comparable to, and thus relevant for, calculation of the costs for a SEF.⁷

* * * * *

We look forward to working with the CFTC to achieve the Congressional objective of promoting swap trading on SEFs. If you have any comments or questions about our comment letter or the SEF issues generally, please contact me or our General Counsel, Chuck Hood, at (212) 813-6053.

Respectfully,

Richard M. McVey
Chairman and Chief Executive Officer
MarketAxess Holdings Inc.

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<http://finance.yahoo.com/news/MarketAxess-and-RBS-Announce-prnews-734564938.html?x=0&.v=1>
MarketAxess expects additional liquidity-providing market participants to stream quotes on the MarketAxess platform in the near future.

⁷ As a note, for purposes of the CFTC's assessment of these SEC cost estimates, in our judgment, the SEC's cost estimate with regard to ongoing annual SB SEF compliance staff costs, which would include the salary of a Chief Compliance Officer and at least two junior compliance personnel, should be increased to an estimated annual cost of \$1.2 million rather than the SEC's estimated annual cost of approximately \$1 million. As to the preparation of financial statements for the SB SEF registration, the SEC's estimate includes a cost of \$99,000 to complete the financial statements and a cost of \$500,000 for independent public accounting services. While the full scope of work needs to be confirmed, both of these estimates strike us as being on the high side, particularly with respect to the independent public accounting services.



Appendix A

Proposed Certifications for Temporary Registration for a SEF Operating a RFQ System

MarketAxess believes that the following certifications of compliance with SEF core principles would facilitate an effective temporary registration for a SEF that operates an RFQ-only platform.

1. The applicant certifies that it operates a swap execution facility that only provides its market participants with a Request for Quote System. If the CFTC's final rules define Request for Quote System as proposed in Rule 37.9(a)(1)(ii), the applicant will certify that its RFQ System complies with the permitted execution standards in this rule. If the CFTC adopts Rule 37.9(b)(2) as proposed, the applicant will certify that its RFQ System complies with this rule by providing market participants with the ability to stream or otherwise post both firm and indicative quotes on Required Transactions on a centralized electronic screen accessible to all market participants who have access to the SEF.

2. The applicant makes the following certifications with regard to the swap execution facility core principles:

Core Principle	Certification
1 – Compliance with Core Principles	The applicant will comply with the core principles as described below and the applicant's SEF permanent registration application demonstrates a good faith effort to comply with all applicable swap execution facility regulations in the future.
2 – Compliance with rules	The applicant: (1) has adopted rules providing terms and conditions for swaps listed on its system; (2) has adopted rules providing fair and objective access criteria to its trading platform for any qualifying Eligible Contract Participants (including buy-side participants as well as liquidity providing swap dealers); (3) has adopted rules for submitting requests for quote and for executing on accepted responses to requests for quote; (4) has adopted rules providing procedures for executing and processing block trades; (5) will produce and retain an audit trail of all swaps entered into on, or pursuant to the rules of, its platform, which may be used to detect rule violations; and (6) will enforce its rules by providing warnings, suspending or denying access to its facilities, and referring significant or repeat violations to the Commission for further review and possible action..

Core Principle	Certification
<p>3 – Swaps not readily susceptible to manipulation</p>	<p>The applicant will not permit trading in swaps that are readily susceptible to manipulation.</p> <p>If Rules 37.300 and 37.301(a) are adopted as proposed in the CFTC's final rules, the applicant will make the following additional certification: "The applicant will comply with Rules 37.300 and 37.301(a)."</p> <p>An applicant who certifies it will only permit trading in swaps based upon a financial commodity will be deemed to have satisfied this core principle.</p>
<p>4 – Monitoring of trading and trade processing</p>	<p>The applicant:</p> <ul style="list-style-type: none"> (1) has adopted rules governing the procedures for executing and processing swaps on its request for quote system; (2) will use execution software that only permits users to act in a manner consistent with the applicant's rules for submitting requests for quote and for executing on accepted responses to requests for quote; (3) will monitor trading to detect aberrant trading activity; (4) will enforce its rules by providing warnings, suspending or denying access to its facilities, and referring significant or repeat violations to the Commission for further review and possible action; and (5) has the ability to comprehensively and accurately reconstruct trades. <p>If Rules 37.402, 37.406 and 37.407 are adopted as proposed in the CFTC's final rules, the applicant will make the following additional certification: "The applicant will comply with Rules 37.402, 37.406, and 37.407."</p>
<p>5 – Ability to obtain information</p>	<p>The applicant has adopted rules permitting it to obtain information from its participants involving participants' activities on the applicant's facilities, and the applicant will provide information to the Commission upon request.</p> <p>If Rules 37.501, 37.503 and 37.504 are adopted as proposed in the CFTC's final rules, the applicant will make the following additional certification: "The applicant will comply with Rules 37.501, 37.503, and 37.504."</p>
<p>6 – Position limits or accountability</p>	<p>The applicant will monitor swaps executed on or through its system for compliance with any applicable CFTC-established positions limits that may be in effect.</p> <p>While appropriate standards are being considered by the industry, the SEF will take appropriate actions, as necessary, to reduce the potential threat of market manipulation or congestion, especially during trading in the delivery month.</p>

Core Principle	Certification
7 – Financial integrity of transactions	<p>The applicant:</p> <p>(1) is connected, and has the ability to send a swap for clearing, to at least one derivatives clearing organization;</p> <p>(2) for cleared swaps, will only permit a participant to submit or receive a request for quote if the participant represents to the applicant that the participant is, or has a relationship with, a clearing member at a derivatives clearing organization to which the SEF is connected; and</p> <p>(3) for uncleared swaps, will only permit a participant to submit or receive a request for quote if the participant represents to the applicant that the participant has adequate credit documentation in place with the prospective counterparty.</p>
8 – Emergency authority	<p>The applicant has adopted rules permitting it to exercise emergency authority when necessary and appropriate, including the authority to suspend or curtail trading in a swap.</p>
9 – Timely publication of trading information	<p>The applicant will make public timely information regarding swaps executed on the applicant's platform.</p> <p>If Rules 37.900-902 are adopted as proposed in the CFTC's final rules, the applicant will make the following additional certification: "The applicant will comply with Rules 37.900-902."</p>
10 – Recordkeeping and reporting	<p>The applicant will maintain records of all activities relating to the business of the SEF for five years and shall report this information to the CFTC as the CFTC determines to be necessary or appropriate for the CFTC to perform its duties under the CEA.</p> <p>The applicant will keep any records related to security-based swap agreements as defined in CEA 1a(47)(A)(v) available to the SEC for inspection.</p> <p>The applicant will collect data on swaps executed on the SEF and will report swap data to the public. Once a swap data repository is available and will accept reports and adequate connectivity has been made available, the applicant will send data on swaps to the swap data repository.</p> <p>If Rules 37.1001-1003 are adopted as proposed in the CFTC's final rules, the applicant will make the following additional certification: "The applicant will comply with Rules 37.1001-1003."</p>
11 – Antitrust considerations	<p>The applicant will not take actions that unreasonably restrain trade or impose a material anticompetitive burden on trading or clearing.</p> <p>If Rules 37.1100-1101 are adopted as proposed in the CFTC's final rules, the</p>

Core Principle	Certification
	applicant will make the following additional certification: "The applicant will comply with Rules 37.1100-1101."
12 – Conflicts of interest	<p>The applicant has adopted rules to minimize conflicts of interest and has adopted rules to resolve conflicts of interest.</p> <p>If Rules 37.19 and 40.9¹ proposing conflict of interest, governance, and ownership requirements are adopted as proposed in the CFTC's final rules, the applicant will make the following additional certification: "The applicant will comply with Rules 37.19 and 40.9."</p>
13 – Financial resources	<p>The applicant:</p> <p>(1) has, and will at all times, maintain financial resources in excess of its total anticipated operating costs for a period of one year as determined on a rolling basis; and</p> <p>(2) has, and will at all times, maintain adequate operational and managerial resources.</p> <p>If Rules 37.1300-1306² proposing financial resource requirements are adopted as proposed in the CFTC's final rules, the applicant will make the following additional certification: "The applicant will comply with Rules 37.1300-1306."</p>
14 – System safeguards	<p>The applicant:</p> <p>(1) has developed and will maintain appropriate controls, procedures, and automated systems that will identify and minimize sources of operational risk;</p> <p>(2) has established and will maintain emergency procedures, backup facilities, and a plan for disaster recovery to allow for timely recovery and resumption of operations and the fulfillment of its responsibilities and obligations; and</p> <p>(3) will periodically conduct test to verify that its backup resource are sufficient to ensure continued processing of executed swaps, price reporting, system monitoring, and maintenance of a comprehensive and accurate audit trail.</p> <p>If Rules 37.1400-1401 are adopted as proposed in the CFTC's final rules, the</p>

¹ We assume that, for Temporary Registration purposes, Proposed Rule 40.9(b)(1)(iii) would not incorporate all of Part 37.

² MarketAxess assumes that in Proposed Rule 37.1304, the intended cross-reference is 37.1301 (not 37.701).

Core Principle	Certification
	applicant will make the following additional certification: "The applicant will comply with Rules 37.1400-1401."
15 – Designation of chief compliance officer	<p>The applicant's:</p> <ul style="list-style-type: none"> (1) Board of Directors has approved the appointment of _____ as its chief compliance officer; (2) chief compliance officer will report to the applicant's chief executive officer or the Board of Directors at least quarterly; (3) chief compliance officer will review the applicant's compliance with the core principles; (4) chief compliance officer will work with the applicant's chief executive officer or the Board of Directors to resolve any significant conflicts of interest; (5) chief compliance officer will be responsible for establishing and monitoring policies and procedures required by the core principles; (6) chief compliance officer will monitor compliance with the applicant's policies and procedures and work with the applicant's management to address any deficiencies; (7) chief compliance officer will design procedures to handle, respond to, remediate, retest, and close any noncompliance issues; (8) chief compliance officer will prepare and sign an annual report describing the applicant's compliance with the Commodity Exchange Act and the applicant's policies and procedures, including the code of ethics and conflict of interest policies; (9) chief compliance officer will submit the annual report described above to the Commission, including a certification that, under penalty of law, the report is, to the best of the chief compliance officer's knowledge and belief, materially accurate and complete; and (10) chief financial officer will submit to the Commission, at the same time the chief compliance officer submits its annual report, the applicant's financial statements certified by the chief financial officer.